IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 28603 of 2007(E)

PETITIONERS:

1. C.J.GEORGE, S/O.LATE C.P.JOHN,
   AGED 76 YEARS, 'CHAMMANAM', 1/263, CHURCH STREET,
   FORT COCHIN, COCHIN-1.

2. C.J.JOHNSON, S/O.LATE C.P.JOHN,
   'CHAMMANAM', CEMETRY ROAD, MISSION QUARTERS,
   THRISSUR.

BY ADV. SRI.T.R.RAVI

RESPONDENTS:

1. THE CORPORATION OF THRISSUR,
   REPRESENTED BY ITS SECRETARY.

2. DISTRICT COLLECTOR,
   THRISSUR.

R1 BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL
R2 BY ADV. SRI.K.J.MOHAMMED ANZAR, SR. GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28603 OF 2007

Dated this the 17th day of October, 2007

JUDGMENT

The petitioner who owns about 1 acre 2 cents of land in Survey No.962/1 and 2287 of Chembukkavu Village in Thrissur Corporation seems to have a genuine grievance. His earlier applications for permit for the construction of a high rise building was rejected by the Thrissur Urban Development Authority and thereafter by Thrissur Corporation on the reason that as per the notified DTP scheme, there is a direction to reserve portions of his property for the purpose of widening the roads situated on the northern and western sides of the properties. In response to an application submitted by the petitioner the Thrissur Urban Development Authority informed the petitioner, vide Ext.P4, that no proceedings for acquisition of any portion of the petitioner's property are pending and that the direction is only to reserve or freeze the petitioner's property for the purpose of the road widening indicated above. Under Ext.P8 the Corporation informed the petitioner that none of the road widening proposals mentioned in the DTP scheme have been implemented so far. The petitioner was also informed that no proceedings for acquisition of land for implementing the road widening

proposals have been initiated yet. Petitioner submits that disgusted by the rejection of his applications for building permit, petitioner dropped the idea of putting up a high rise building on the property and took a decision to sell the property. But the prospective purchasers who are willing to purchase the property are mislead by the local authority which points out the directions in the DTP Scheme to them.

2. It is in the above background that the petitioner has moved this Writ Petition seeking the following reliefs:

> i) call for the records leading upto Ext.P8 and to quash the decision of the respondents, to reserve the lands belonging to the petitioners for the purpose of widening of the roads on the northern and western side of the properties, as can be seen from Ext.P4 reply of the TUDA and to quash the same by the issuance of a writ of certiorari or such other writ, order or direction;
>
> ii) declare that the action of the respondents in freezing/reserving the lands belonging to the petitioners indefinitely, on an alleged reason of widening of roads, as per sanctioned Kannankulangara DTP Scheme, is illegal;
>
> iii) direct the respondents not to take any steps to acquire the lands belonging to the petitioner in Sy Nos.962/1 and 2287 of Chembukkavu village within Thrissur Corporation limits;

3. The 1st respondent Corporation has filed a detailed counter affidavit, wherein paragraph 7 it is contended as follows:

> "7. The TUDA then in existence had been implementing the developmental activities envisaged under the detailed town planning project prepared under the Town Planning Act. These developmental activities can be implemented only with the co-operation of the owners of the nearest lands. Now after the merger of the TDA with the Thrissur Corporation, the Corporation is proceeding with these welfare activities for the development of the concerned area. Building permits are issued in any land only after leaving the required land for widening the road as per the maser plan/scheme and only in the remaining extent of land. Compensation for the land acquired for widening the roads within the scheme area will be given after completion of land acquisition proceedings."

4. In paragraph 9 it is contended that the DTP scheme have been in existence for several years past and is being implemented one after another. The relief sought for are resisted on the ground that nobody have any right to say that the DTP Scheme has to be completed or abandoned for personal requirement of any private land owner.

5. Heard Sri.T.R.Ravi, counsel for the petitioners and Sri.K.B.Mohandas, Standing Counsel for the Corporation. Drawing my attention to the averments in the Writ Petition and the documents placed on record, Mr.Ravi would rely on various judgments such as **Padmini v. State of Kerala** [1999 (3) KLT 465]; **Raju Jethmalani & others v. State**

of Maharashtra & others [(2005) 11 SCC 222]; **Francis v. Chalakudy Municipality** [1999 (3) KLT 560].

6. Mr.Mohandas would oppose all the submissions of Mr.Ravi. Having considered the rival submissions addressed at the Bar and in the light of the ratio emerging from the decisions cited above, I am of the view that the respondents are not justified in freezing the petitioner's properties indefinitely on the reason that as per the sanctioned DTP scheme his properties are directed to be reserved for the proposed widening of the roads situated on the northern as well as the western side. The DTP Scheme at least to the extent it pertains to the road widening proposal has become oppressive to the petitioner. Significantly none of similar road widening schemes have been implemented despite several years of the operation of the same.

7. The petitioners are entitled for a declaration that the action of the respondents in freezing lands belonging to them indefinitely o the reason that as per the sanctioned Kannankulangara DTP Scheme, there is a proposal to widen the roads is illegal. Accordingly, such a declaration is issued. It is further ordered that if a notification under Section 4(1) of the Land Acquisition Act for acquisition of any portion of the petitioners' properties is not promulgated within 18 months from this

date, the petitioners will be at liberty to deal with their properties in manners of their choice, notwithstanding the existence of the DTP Scheme.

The Writ Petition will stand allowed to the above extent but in the circumstances without any order as to costs.

PIUS C. KURIAKOSE, JUDGE

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